state and being required to report by letter at least once a month to the circuit judge. While on parol he was arrested under a warrant issued by the Governor of Oregon, directing his extradition to California to answer to a charge of forgery there pending against him. Appellant instituted *habeas corpus* proceedings to secure the discharge of her husband,basing her claim on a statute which provided that one in custody upon conviction of crime cannot be delivered up until legally discharged therefrom. *Held,* the prisoner could not be extradited. *Carpenter* v. *Lord,* (Ore., 1918), 171 Pac. 577.

The duty of the governor of a state to deliver up a fugitive from justice, charged with crime in another state, and demanded by the executive authority thereof, is imperative. SPEAR, EXTRADITION, 243. If, however, at at the time of the demand for extradition, the accused is held in custody on a criminal charge in the state to which he has fled, he need not be surrendered till the judgment of that state is satisfied. *Taylor* v. *Taintor,* 16 Wall. 366. The cases seem to hold that a prisoner on parol is still in the custody of the state. *Drinkall* v. *Spiegel,* 68 Conn. 441; *Hughes* v. *Pflanz,* 71 C. C. A. 234. But whether the governor of the asylum state may waive the claims of its courts to the control of the fugitive is still an open question. In some cases involving, it is true, the extradition of persons at large on bail, it has been held that the governor has the power to waive the claims of his state in favor of those of a sister state, and the reasoning of the court would seem to be equally applicable to the situation presented in the instant case. *State* v. *Allen,* 2 Humph. (Tenn.) 258; *In re Hess,* 5 Kan. App. 763; *People* v. *Hagan,* 34 Misc. 85. Other courts, conceding the power of the asylum state to waive its rights, have held that it is not a matter for the executive branch of the government. *Hobbs* v. *State,* 32 Tex. Cr. App. 312; *Opinion of the Justices,* 201 Mass. 609. The majority of the court in the present case, in holding the governor bound by a statute declaring the adjudication of a person's legal condition conclusive, have evidently treated the matter as within the province of the legislative department.

FOOD—SALES—LIABILITY TO THIRD PARTIES.—Pork sausage infected with trichinae was sold by the defendant to a retail dealer. The retailer sold it to H., in whose home the plaintiff was employed as a domestic. The plaintiff ate of the sausage and became ill. She sued, claiming that the defendant was guilty of negligence, in that the meat had not been thoroughly inspected. *Held,* for defendant, that while negligence of a manufacturer in the preparation of an article of food is actionable by persons who suffer therefrom, there was no negligence here, since it was not certain that even a number of microscopic tests would have disclosed the fact of the disease. *Ketterer* v. *Armour & Co.* (C. C. A. 2nd Circ. 1917), 247 Fed 921.

Third persons cannot, in general, recover for injuries received because of negligence in the performance of a contract between two other persons, there being no privity of contract on which to base an action. *Winterbottom* v. *Wright,* 10 M. & W. 109; *Lydecker* v. *Board of Chosen Freeholders,* (—N. J.—), 103 Atl. 251. But in certain cases of sales, a remedy

is allowed, not on the basis of contract, but of tort. *Blood Balm Co.* v. *Cooper,* 83 Ga. 457. In these cases it is recognized that a person, in the performance of a contract, may owe a duty of care to outsiders. See *Kerwin* v. *Chippewa Shoe Mfg. Co.,* 163 Wis. 428. *Miller* v. *Steinfeld,* 160 N. Y. S. 800, 15 MICH. L. REV. 181. Exactly what the extent of that duty should be is not universally agreed upon. Whenever the article sold is something other than food, the courts seem apt to be more lenient with the manufacturer than when it is matter intended for human consumption. In *Langridge* v. *Levy,* 2 M. & W. 519, 4 M. & W. 337, the English court *held* the vendor of a gun to the father of the plaintiff liable on the grounds of fraud, for an injury to the plaintiff caused by an explosion of the gun. The vendor had made false representations as to the weapon's make and quality. Negligence was added to fraud in *George* v. *Skivington,* L. R. 5 Ex. 1, where the article sold was hair wash. A Federal court has held a liability would exist where a threshing machine was made so as to be imminently dangerous to human life, if the maker knew of it, and the purchaser was not informed of the danger. *Huset* v. *J. I. Case Threshing Machine Co.,* 120 Fed. 865; commented on in 2 MICH. L. REV. 151. Another Federal court has also held that an automobile manufacturer was not liable to a purchaser from a middleman for injuries received through the breaking of a defective wheel. *Cadillac Motor Car Co.* v. *Johnson,* 221 Fed. 801. In a similar case the New York court held the automobile manufacturer liable. *MacPherson* v. *Buick Motor Co.,* 217 N. Y. 382. And where a needle in a bar of soap ran into plaintiff's hand and paralyzed him, the manufacturer was excused on the grounds that the injury was an extraordinary and unusual consequence which an ordinarily prudent person could not have foreseen. *Hasbrouck* v. *Armour & Co.,* 139 Wis. 357. But when food has caused the damage the courts find for the plaintiff with greater alacrity. But see *Liggett & Myers Tobacco Co.* v. *Camnon,* 132 Tenn. 419, 14 MICH. L. REV. 164, where plaintiff became ill by chewing a bug in a plug of tobacco. The general view appears to be that a high degree of care is due on the part of the manufacturer, but that negligence is the basis of the action. *Brown* v. *Marshall,* 47 Mich. 576; *Tomlinson* v. *Armour & Co.,* 75 N. J. L. 748; *Crigger* v. *Coca Cola Bottling Co.,* 132 Tenn. 545; *Parks* v. *The C. C. Yost Pie Co.,* 93 Kan. 334. That even negligence is not necessary to create the liability is indicated in *Jacksn Coca Cola Bottling Co.* v. *Chapman,* 106 Miss. 864, and it is expressly stated that the duty is absolute in *Catani* v. *Swift & Co.,* 251 Pa. 52. Directly contrary to all these cases is *Nelson* v. *Armour Packing Co.,* 76 Ark. 352, where the court, without mentioning tort, held that since there was no privity of contract between the manufacturer of unhealthy tinned tongue and the consumer who bought from a middleman, there was no liability for injuries the tongue occasioned. This decision, clearly, "is not in touch with the modern drift of authority." *Mazetti* v. *Armour & Co.,* 75 Wash. 622. In the *Mazetti* case, the general doctrine of liability was extended to allow a restaurant keeper to recover for injury to his trade. He had purchased from a retailer, food made by the defendant, and a patron who ate of it became

ill at once, and publicly denounced his restaurant. Public policy, at the basis of our pure food laws, is probably the most potent factor in this liability of food manufacturers. *Mazetti* v. *Armour & Co., supra.* The principal case was before the court, on demurrer, in *Ketterer* v. *Armour & Co.,* 200 Fed. 322. At that time it was held that there would be a liability if the defendant were negligent. The instant decision determines, on the merits, that there was no negligence. *Cf. Race* v. *Krum* (N. Y.), 118 N. E. 853, 16 MICH. L. REV. 555.

INJUNCTION—NEGATIVE COVENANT—"REFUSAL."—S. having composed a book entitled "The Great War," contracted with the complainant for its publication. The contract declared that S. assigned to complainant the work, that the complainant should have the first refusal of any continuation thereof, and that S. should receive payment on a royalty basis. *Held,* that the provision in the contract that complainant should have the refusal of any continuation of the history had to be treated as an option, and could not be construed as amounting to a negative covenant, warranting the issuance of an injunction restraining S. from writing for any other publisher, on the theory that his services were unique and extraordinary. *Kennerley* v. *Simonds,* (D. C., 1918), 247 Fed. 822.

Whether the negative covenant be express or implied in a contract for personal services, equity will never interfere to restrain, by injunction, a violation of such a covenant, unless the services contracted for are especially unique and extrordinary. *Strobridge Lithographing Co.* v. *Crane,* 12 N. Y. Supp. 898; *Hammerstein* v. *Mann,* 122 N. Y. Supp. 276; *Rogers Mfg. Co.* v. *Rogers,* 58 Conn. 356. In the instant case, therefore, when the court, having *assumed* that the contract in question was one for personal services, found that the services contracted for by the parties were not so especially unique and extraordinary as to warrant an interference, by injunction, to restrain a violation of a negative covenant, it could have stopped, without going into the question whether, there being no express negative stipulation, there was an implied one. But the court seems to have gone wrong from the very beginning, since it assumed that the contract in the principal case was a contract for personal services. This was not a contract whereby S. agreed to write certain works and give the complainant the refusal thereof; but this was a contract whereby S. agreed that, *in case* he wrote certain works, the complainant should be given the refusal thereof. Such being the nature of the contract, it clearly was not a contract for personal services, but such a one that, S. having written the works, equity could compel performance by requiring him to offer the complainant the refusal of them. The contract was thus similar to any other option contract to buy or sell (or offer for sale), which type of contract equity will enforce, in spite of the fact that the court, in the instant case, intimates the contrary. *Johnston* v. *Trippe,* 33 Fed. 530; *New Eng. Trust Co.* v. *Abbott,* 162 Mass. 148; WATERMAN ON SPECIFIC PERFORMANCE, sec. 200. In this view of the situation, it appears that the complainant was entitled to the relief he sought, on the ground that he had no adequate remedy at law, for an action for